Annex C

CASE SUMMARY

Complaint against the former Agriculture and Fisheries Department and the Lands Department for evading responsibility and delaying action on a tree which posed danger to passers-by.

The Complaint

The complainant lodged a complaint against the former Agriculture and Fisheries Department (AFD) and the Lands Department (Lands D) for evading responsibility to fell a tree in a village in the New Territories which posed danger to passers-by.

2. The complainant wrote to District Office/Tai Po (DO/TP) in December 1998 requesting assistance to fell a dead tree which was about forty feet in height as well as another tree in similar conditions in the vicinity. DO/TP then referred his request to AFD for follow-up action. However, the subject tree was assessed by AFD as posing no immediate danger and the case was referred to District Lands Office/Tai Po (DLO/TP) for action. In April last year, the complainant further complained that some branches of the tree had fallen down onto the footpath, posing severe danger to passers-by. Nevertheless, AFD maintained that the subject tree posed no immediate danger and that the maintenance of the tree did not fall within its ambit. Feeling aggrieved that AFD had shirked its responsibility, he complained to The Ombudsman.

Observations and Comments

3. With the consent of the complainant, this Office referred his complaint to AFD for direct action under the Internal Complaints Handling Scheme at first. An exchange of correspondences and arguments had since ensued between AFD and DLO/TP on the question of responsibility but no action was taken to fell the subject tree.

4. In July last year, an investigation officer of this Office conducted a site inspection and noted that the subject tree stood near a slope on a footpath in the village and it appeared to be dead. A pile of bulky branches was also found on the side of the footpath. This Office thus decided to conduct an investigation into the complaint. As the matter also involved Lands D, the complainant consented to include Lands D as a complainee department. This Office also requested the former Planning, Environment and Lands Bureau (PELB) to give its comments on the matter.

5. AFD was the authority for assessing if a tree posed immediate or potential danger and deciding whether it should be felled. AFD explained that

according to Group (e) of Appendix I of PELB Technical Circular No. 3/94 (the Circular), the Director of Agriculture and Fisheries "does not maintain vegetation/trees on unallocated Government land". Where maintenance of vegetation/trees on such land was required and the responsibility did not rest with other departments or public utility companies, DLOs might undertake the maintenance work with funds from the Government Land Maintenance Vote.

6. AFD replied to the complainant on 19 May 1999 advising him that DLO/TP had agreed to assume responsibility for his request for tree felling. This Office however noted that what DLO/TP was in fact suggesting was that the tree was posing immediate danger to passers-by and therefore AFD should be responsible for its felling. AFD had obviously misled the complainant on the question of responsibility.

7. On the other hand, though the subject tree was assessed by AFD as posing no immediate danger in April last year, its branches had continued to fall down. According to AFD, the falling of branches was a natural phenomenon of all trees, even healthy trees. However, observations made by our investigation officer in the site inspection revealed that some fallen branches found piling along the footpath measured about 15 centimetres in diameter.

8. The delineation of responsibility over tree maintenance and tree felling on unleased and unallocated Government land had always been a matter of dispute between the two departments concerned. This Office was of the view that AFD played an important role in the overall maintenance of vegetation/trees. In case of doubt, it should seek clarification on the relevant sections of the Circular from PELB immediately so that the problem could be solved as early as possible. However, AFD had not done so. This omission had contributed to the delay in resolving the present complaint and other similar complaints. The complaint against AFD was therefore **substantiated**.

9. On the question of responsibility for the felling of the subject tree, Lands D commented that the Circular only stipulated that DLOs might undertake tree trimming where warranted but it made no reference to tree felling. Lands D further commented that their term contractors had little or no expertise in tree maintenance generally, let alone tree felling which was specialist work. In the present case, the Landscaping Division of Lands D would ask its landscape contractor to fell the subject tree and another tree in similar conditions. Lands D pointed out that this was a one-off exercise under a special arrangement.

10. According to Lands D, the present case was not unique. As a matter of fact, it highlighted a wholly unsatisfactory arrangement for the maintenance and, if necessary, the felling of trees on unleased and unallocated Government land. Lands D intended to bid for funds to employ a specialist term contractor and a landscape architect to do the job. Lands D suggested that it would be helpful, as an interim measure, for AFD to provide expert advice and assistance as necessary until it was in a position to undertake the task properly.

11. This Office was of the view that both AFD and Lands D should have acted earlier to seek clarification from PELB on the grey areas of the Circular. Lands D had not taken earlier action to clarify the question of inter-departmental responsibility and had consequently caused delay to the resolution of the present complaint and other similar complaints. The complaint against Lands D was therefore **substantiated**.

12. According to PELB, the Circular specified that AFD was the authority to fell trees on unleased Government land but where warranted, DLOs might undertake trimming and other vegetation maintenance. In the context of the present complaint case, apparently AFD and Lands D had different interpretations of “authority for tree felling” and “maintenance responsibility” as set out in the Circular. PELB admitted that grey areas in the Circular had resulted in buck-passing by the two departments. PELB agreed to review the Circular in consultation with the departments concerned with a view to establishing a clearer delineation of the responsibility among them. In the interest of public safety, PELB had asked Lands D to fell the two trees on 7 September 1999.

13. Overall, The Ombudsman concluded that there was delay in the action taken by AFD and Lands D in response to the request made by the complainant and both departments had no consideration for the complainant himself as well as other persons who might have been affected by such action. Therefore, this complaint was **substantiated**. This complaint had brought to light a long running dispute over the delineation of departmental responsibility between AFD and Lands D. The Ombudsman considered that it would be desirable for Lands D to formulate some agency arrangements with AFD and the former Urban Services Department and/or the former Regional Services Department so that it could fund the undertaking of tree maintenance work on unleased Government land by these departments on a contractual basis. The Ombudsman recommended that -

(a) AFD and Lands D should involve the relevant policy Bureau to review and resolve the question of delineation of responsibility for tree felling, maintenance and other related issues;

(b) this Office be informed of the results of the review; and

(c) prior to completion of the review, interim measures should be adopted to address similar outstanding complaints.

Comments from AFD, Lands D and PELB

14. AFD asserted that in accordance with the delineation of responsibilities in the Circular, the trees in question were within DLO/TP’s responsibility. It did not agree that there were grey areas in the Circular. As regards PELB’s admission of the existence of grey areas in the Circular, AFD remarked that this was contrary to the advice previously given by PELB in its memo dated 12 September 1996. AFD accepted the recommendations of The

Ombudsman with the proviso that the expert advice and assistance suggested by Lands D should be restricted to the amenity/ecological value of the trees and to whether the trees posed immediate danger.

15. Lands D expressed reservations on this Office's substantiated finding against it. It opined that with public safety at stake, the department with the appropriate expertise should take action to ensure public safety. It also pointed out that DLO/TP had tried but failed to convince AFD of the potential danger posed by the trees. Lands D did not support the suggestion of hiring the professional service of other departments on a contractual basis to undertake tree maintenance work on unleased Government land. Nevertheless, it would further explore options to deal with the issue. The three recommendations made by The Ombudsman were accepted by Lands D.

16. In respect of the remarks made by AFD in para. 14 above, PELB explained that the memo aimed to clarify the authority for approving the felling of trees and the way to apply for such approval, but did not elaborate on the responsibility for "maintenance of trees". PELB reiterated that the grey areas in the Circular were on "maintenance of trees" and "tree felling responsibility". The present case confirmed that AFD and Lands D might have different interpretations of the delineation of responsibility. PELB intended to solicit the views of the departments concerned on the review of the Circular and hoped to remove any grey areas concerning the delineation of authority.

Final Remarks

17. The Ombudsman had carefully studied the comments from AFD, Lands D and PELB. At present, many requests for tree maintenance lodged with DLOs were still awaiting action. This clearly illustrated the unsatisfactory performance of the departments concerned on this aspect of work. Furthermore, the ten months' delay in the present case could not be justified. The Ombudsman therefore saw no strong grounds to change the "substantiated" conclusion reached in the investigation report.

Office of The Ombudsman
Case ref.: OMB 1999/1079 & 2383
February 2000